

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

EASTERN DIVISION

No. 05-10849RGS

HELEN RUNGE,
Plaintiff

v.

WALTER J. KELLY,
KERRY L. BLOOMINGDALE, M.D., and
SUNBRIDGE NURSING AND
REHABILITATION CENTER,

Defendants

**DEFENDANT WALTER J. KELLY'S ANSWER
TO COUNT XIV OF PLAINTIFF'S AMENDED COMPLAINT**

The Defendant, Walter J. Kelly, previously answer the Plaintiff's Amended Complaint. However, Count XIV of Plaintiff's Amended Complaint was the subject of a Motion to Dismiss filed by Walter J. Kelly. The motion was denied, and therefore Defendant Kelly answers Count XIV as follows. Defendant Kelly incorporates by reference his Answer to Plaintiff's Amended Complaint.

COUNT XIV

**Abuse of Process
(vs. Defendant Kelly)**

106. The Defendant repeats and incorporates herein his answers to paragraphs 1 through 106 of the Amended Complaint.

107. The Defendant states that the allegations contained in paragraph 107 of the Amended Complaint seek conclusions of law to which no response is required. To the extent a response is necessary, Defendant denies the same.

108. The Defendant denies the allegations in paragraph 108 of the Amended Complaint.

109. The Defendant denies the allegations in paragraph 109 of the Amended Complaint.

WHEREFORE, the Defendant respectfully requests that this Honorable Court enter judgment of dismissal, and award him his costs and attorney fees, and for other relief as this Court may deem just and equitable.

AFFIRMATIVE DEFENSES

1. The Amended Complaint fails to state a claim upon which relief can be granted.

2. Plaintiff is barred from recovery because this action has not been brought within the applicable statute of limitations.

3. Any damages sustained by plaintiff were caused by individuals for whose conduct Defendant was not responsible.

5. The Plaintiff lacks the capacity to bring a lawsuit.

6. This Court lacks jurisdiction.

7. Any liability on the part of the Defendant Kelly must be reduced or is barred by the plaintiff's comparative negligence.

8. This action is barred by the clean hands doctrine.

9. This action is barred by the doctrine of res judicata and collateral estoppel.

The Defendant reserves the right to amend the Answer if the pending Partial Motion to Dismiss is denied.

THE DEFENDANT DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Dated: September 13, 2006

Respectfully submitted,

The Defendant,
WALTER J. KELLY,
By his attorneys,

/S/ Michele Carlucci
George C. Rockas, BBO #544009
Michele Carlucci, BBO #655211
WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP
155 Federal Street
Boston, MA 02110
(617) 422-5400

CERTIFICATE OF SERVICE

I, Michele Carlucci, certify that on September 13, 2006 I have served a copy of the forgoing to all counsel of record by first class mail and by electronic filing:

James S. Hamrock, Esq.
Hamrock & Tocci
101 Main Street, 18th Floor
Cambridge, MA 02142

Blake J. Godbout, Esq.
Blake J. Godbout & Associates
33 Broad Street, 11th Floor
Boston, MA 02109

Glen R. Davis, Esq.
Latsha Davis Yohe & McKenna, P.C.
1700 Bent Creek Boulevard, Suite 140
Mechanicsburg, PA 17050

Robert J. Roughsedge, Esq.
Michael Williams, Esq.
Lawson & Weitzen, LLP
88 Black Falcon Avenue, Suite 345
Boston, MA 02210-2414

/S/ Michele Carlucci
Michele Carlucci